IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5595 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINCHANDRA @ PRATIKBHAI CHANDRAKANT SHAH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI, Advocate for Petitioner

Mr. Samir Dave, A.G.P. for Respondent nos.1 to 3.

Ms. Davawala, Advocate for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/10/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. H.R. Prajapati for the petitioner, learned A.G.P. Mr. Samir Dave for the respondents nos.1 to 3 and Ms. Davawala, learned Advocate for the respondent no.4.

1. The detention order dated 20th July, 1999 passed by the respondent no.2-District Magistrate, Mehsana, in

exercise of powers conferred under Section 3(2)(a) of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980("PBM Act" for short) is challenged by this petition filed under Article 226 of the Constitution.

2. The petitioner detenu is served with the grounds of detention dated 20th July, 1999, copy of which is produced at Annexure "B". The said grounds indicate inter alia that the petitioner has been engaged in business and is running a factory in the name and style of Jyot Petrochem at Pramukh Industrial Estate, Rakanpur, Taluka Kalol, District Mehsana. That on receipt of intelligence the officials of Civil Supplies Department carried out a raid on 18-7-1999 on the said factory of the petitioner and seized 12,000 litres of controlled kerosene of blue colour from a tanker bearing registration no.GRT 4608 and during the said raid another tanker bearing registration no.GRT 4616 with 8000 litres of controlled kerosene of blue colour was also seized. That after due inquiry, the respondent no.2-detaining authority has come to the conclusion that the petitioner-detenu has committed breach of Section 3(1) of the Gujarat Essential Articles(Licensing Control and Stock Declaration) Order, 1981 and has been acting prejudicially instigating the activity of blackmarketing. It is also stated that the petitioner-detenu has committed an offence under Section 3 read with Section 7 of the Essential Commodities Act,1955.

3. The petitioner has challenged the impugned order on numerous grounds. Learned Advocate Mr. H.R. Prajapati had submitted at the Bar that on 23-7-1999, the representation has been sent to the respondent no.2-District Magistrate, Mehsana on behalf of the petitioner-detenu stating a fact that on the date of passing of detention order, the petitioner was in judicial custody as he was arrested on 18-7-1999 for the offences made punishable under Sec.3 read with Section 7 of the Essential Commodities Act,1955. That the petitioner claimed report of FSL and other documents through the said representation. That the said representation of the petitioner was rejected and the petitioner was informed vide letter dated 6-8-1999 to that effect. It is submitted at the Bar that the grounds of detention does not indicate the fact that on the date of passing of the impugned order, the detaining authority was alive to the fact in respect to the petitioner-detenu being in judicial custody on account of arrest being made on 18th July, 1999 which shows non application of mind on the part of the detaining authority. That non

application of mind is further borne out from the fact that despite disclosing the said fact of arrest and being in judicial custody by a representation dated 23-7-1999, neither the respondent no.2-detaining authority nor the respondent no.1- State Government have applied the mind to the fact that the impugned order detaining the petitioner though he was in judicial custody without any material produced on record about the likelihood of the petitioner being released on bail was invalid. That on account of such non application of mind, the subjective satisfaction reached by the respondent no.2-detaining authority was vitiated and has rendered the impugned order illegal.

4. That in the matter of RAVABHAI PRATAPSINH JADEJA VS. K.N. BHATT OR HIS SUCCESSOR IN OFFICE, DISTRICT MAGSITRATE, ANAND AND ORS. (1999(1) G.L.H. 594, this Court relying on the earlier judgment of the Supreme Court in the matter of ABDUL SATHAR IBRAHIM MANIK VS. UNION OF INDIA AND ORS.(AIR 1991 SC 2261) has expressed the view that the grounds of detention should reflect the fact that detenu was in judicial custody and there was compelling reason to prevent him from indulging into prejudicial activity as detenu was likely to be released on bail. It may be noted that in ABDUL SATHAR'S case (Supra), the apex Court has enumerated following proposition as guidelines in paragraph 12 of the judgment:

"(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if

not placed before the detaining authority it does not amount to suppression of relevant material. The question of non application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passing referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case, the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

5. In the instant case one Mr. G.K. Rathod, Under Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department has filed affidavit dated 22nd September, 1999 wherein datewise account of consideration of representation of the petitioner dated 23-7-1999 is stated. However, the affidavit is totally devoid of any explanation to the contention raised by the petitioner vide ground "K" and the case law stated on behalf of the petitioner. That the said fact suggests that not only on the date of passing of detention order, the respondent no.2-detaining authority was not aware of the fact that the

petitioner-detenu was arrested on 18-7-1999 and was in judicial custody on the date of passing of the impugned order, but the department also appears to be not aware of the said fact till the date of filing of the affidavit in court, and thereby,the impugned order having been vitiated on account of non application of mind on the part of the respondent no.2-detaining authority cannot be sustained and deserves to be quashed and set aside.

6. As the petition succeeds on the above stated ground alone, it is not necessary to discuss and decide the other contentions urged on behalf of the petitioner.

7. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 20-7-1999 passed by the respondent no.2-District Magistrate Mehsana against the petitionder-detenu is hereby quashed and set aside. The petitioner-detenu-Pravinchandra alias Pratikbhai Chandrakant Shah is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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